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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SID M. SAFI ESLAMI,

Plaintiff and Appellant,

v.

J. NEGRETE et al.,

Defendants and Respondents.

E046994

(Super.Ct.No. RIC452844)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge.

Affirmed.

Sid M. Safi Eslami, in pro. per., for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Arthur K. Cunningham, Rosemary B. Koo and Stephanie J. Tanada for Defendants and Respondents.

Plaintiff and appellant Sid M. Safi Eslami sued defendants and respondents J. Negrete, L. Torres, and Don Williamson, and other law enforcement officers, for various causes of action arising from their alleged failures to properly investigate charges that plaintiff's landlord had broken into plaintiff's rental premises and caused various

damages. The trial court sustained the officers' demurrers to the second amended complaint without leave to amend. We affirm.

FACTS AND PROCEDURAL HISTORY

Because the matter arises on demurrer, we take the facts from the operative pleading, the second amended complaint. The allegations of the operative pleading are deemed true for the limited purpose of determining whether plaintiff has stated a viable cause of action. (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

In January 2003, Patrick and Drina Doran owned a house on Willow Street in Norco. Plaintiff moved in, renting a portion of the Willow Street house. In about August 2003, the Dorans wanted to sell the Willow Street house, and hired plaintiff to create a website to market the property. Between August 2003 and March 2004, plaintiff acquired the desired domain name and set up the marketing website. In March 2004, the Dorans sold the Willow Street house; plaintiff and the Dorans moved to another house (the 4th Street house) on the same rental basis as before.

In about June 2004, the Dorans asked plaintiff to create a new website to sell the 4th Street house. Plaintiff told the Dorans that he had not yet been paid all he was owed for creating the first website and providing computer technical support for it. When plaintiff complained that he had not been fully paid for the first website, the Dorans became upset and began a campaign of harassment against plaintiff.

Plaintiff alleged that the Dorans ridiculed plaintiff's national origin (plaintiff is Iranian), repeatedly cut the chain on the door to the enclosure for plaintiff's show pigeons, mixed household chemicals together in the bathroom adjacent to plaintiff's room

to create noxious odors, encouraged other tenants and neighbors to create physical altercations with plaintiff, and made death threats against plaintiff.

Plaintiff asserted that harassing activities took place between June 2004 and December 2004; on December 31, 2004, Patrick Doran allegedly yelled at plaintiff, saying, ““you are on my hit list now,”” that he would ““get”” plaintiff, and that the Dorans would break into plaintiff’s part of the residence, take what they wanted and destroy plaintiff’s property if he did not move out that day. Patrick Doran bragged that he could get away with his plan, because law enforcement officers were corrupt and lazy. Doran asserted that he had perpetrated similar illegal conduct in the past with the help of sheriff’s deputies. He and his wife knew how to manipulate the law enforcement officers into supporting their interests.

When plaintiff said that he would go to the sheriff’s station to report the death threats and seek protection, Patrick Doran stated that he would call the sheriff’s station before plaintiff’s arrival and make up a story to deflect blame from himself. Plaintiff did go to the sheriff’s station, but was told that Doran had called in. Plaintiff was directed to meet Deputy Torres at the Willow Street house.

Plaintiff met Deputy Torres at the Willow Street house and told the deputy of Doran’s threats against his person and his threats to break into plaintiff’s premises to take and damage his property. Plaintiff alleged that the deputy was not interested in plaintiff’s complaints. Deputy Torres declined to intervene unless and until Doran actually did something to carry out the threats. A neighbor also told Deputy Torres that he had had similar conflicts with Doran, but Deputy Torres dissuaded the neighbor from making

additional statements. Saying that the matter was a waste of his time, Deputy Torres departed.

On January 2, 2005, the Dorans banged on plaintiff's door and left a defective eviction notice. Plaintiff took the notice to the sheriff's station; the desk clerk advised plaintiff to wait for a court hearing date and in the meantime to avoid the Dorans.

Plaintiff alleged that after January 2, 2005, the Dorans came to his residence door every day, trying to provoke an altercation. Plaintiff became frightened and went to a motel room while waiting for a court date on a proper eviction notice. On January 31, plaintiff returned and found that his room had been broken into and some of his property taken. The rest of his belongings had been moved to a horse stall where it had become damaged.

Plaintiff went once again to the sheriff's station to report the burglary of his residence and theft or damage to his property. Deputy Negrete met with plaintiff, but allegedly refused to take a report. Deputy Negrete advised plaintiff to file a civil suit to resolve plaintiff's disputes with the Dorans.

Dissatisfied, plaintiff asked to speak with Deputy Negrete's superior officer. Deputy Odgaard then met with plaintiff. Plaintiff alleged that Deputy Odgaard berated him and shouted at him, and that Deputy Odgaard attempted to intimidate plaintiff into giving up his complaint against the Dorans. Deputy Odgaard allegedly threatened to fabricate a charge against plaintiff if he persisted in making a complaint. Plaintiff then said he would file a grievance against Deputies Negrete and Odgaard. Deputy Odgaard

ultimately agreed to have Deputy Negrete investigate the alleged breaking and entering, and the theft and destruction or damage of plaintiff's property and belongings.

After waiting several weeks, plaintiff went to the sheriff's station and discovered that Deputy Negrete had filed a report,¹ but plaintiff believed the report was erroneous in several respects: First, while plaintiff wished to report a crime, Deputy Negrete's report characterized the matter as a civil dispute. Second, when plaintiff first complained to law enforcement, he was advised to wait until a court date could be set for the allegedly unlawful eviction proceedings, and to reduce his contact with the Dorans. Following this advice allowed the Dorans to carry through on their threats to break into plaintiff's premises and destroy his property. Third, in general, plaintiff accused Deputy Negrete of "intentionally slant[ing] and manipul[at]ing the rest of the facts in the initial report to help the violators by making excuses for them and refus[ing] to correctly investigate Plaintiff['s] complaint." Plaintiff telephoned the sheriff's station numerous times and left messages for Deputy Negrete "to find out why he had changed his complaint and filed that factually false report," but Deputy Negrete did not respond.

Eventually, Deputy Negrete called plaintiff and agreed to conduct a further investigation, including consulting with Deputy Torres and interviewing all the tenants. Again, plaintiff did not hear back, but he later discovered that Deputies Negrete and Torres had each filed a supplemental report. As before, plaintiff disagreed with the content of the supplemental reports. Plaintiff complained that Deputy Negrete falsely

¹ No copy of the police report appears in the record.

mischaracterized the nature of plaintiff's complaint (personal threats and threats to break in and take property, versus an eviction dispute). As to Deputy Torres, plaintiff alleged that he had "failed to properly warn Patrick Doran against breaking and entering into Plaintiff['s] residence, taking Plaintiff['s] property and destroying the rest of Plaintiff['s] properties," and "failed to timely file a crucial incident report about the threats made against plaintiff."

When plaintiff complained orally to senior officers, the Riverside County Sheriff's Department (the Department) undertook an internal inquiry into the investigation of plaintiff's complaints about the Dorans. The Department informed plaintiff that, after review, no further action would be taken.

Plaintiff complained that assigning the matter to internal investigation channels was improper. No "independent" investigation of the officers' alleged misconduct took place, but rather was conducted by coworkers of the accused officers. Plaintiff asserted that a Department dispatcher approved or ordered the Dorans' break-in of plaintiff's premises.

Plaintiff alleged on information and belief that the City of Norco (the City) had a policy of non-enforcement of various codes applicable to rental premises as against the Dorans. That is, the City knew of numerous illegal rooming house violations and code violations in the Dorans' property, as well as numerous complaints from tenants, neighbors and other concerned citizens, but did not take any investigative or corrective action.

By refusing to properly investigate plaintiff's complaints, the City, the Department and the various officers illegally discriminated against plaintiff based on his national origin and ancestry.

Based on this alleged sequence of events, plaintiff filed an action against the City, the Department, and individual officers involved in various parts of the investigation into plaintiff's allegations against the Dorans. Plaintiff's initial complaint named the City, the County of Riverside (the County), and the Department as defendants. Plaintiff's form pleading asserted causes of action for negligence, intentional tort, civil rights violations, and declaratory and injunctive relief. Plaintiff asserted as damages the loss of wages, loss of use of property, medical expenses, property damage, loss of earning capacity, and damage to and death of his show animals. Plaintiff's sheet for his fraud cause of action also named various officers (Deputies Williamson, Borden, Hudson, Negrete, Odgaard and Torres) as defendants.

The City and the County demurred to the initial complaint. In April 2007, the trial court sustained the demurrers of the City and the County without leave to amend. Several of the officers also demurred; their demurrers were sustained, but leave to amend was granted.

Plaintiff filed a first amended complaint in August 2007. Deputies Torres and Negrete demurred to the first amended complaint, which was the first pleading to set forth the details of what plaintiff alleged happened. The court again sustained the demurrer with leave to amend.

Plaintiff filed his second amended complaint in February 2008. He continued to name the City, the County and the Department (a subdivision of the County) even though their demurrers had been sustained without leave to amend, and judgment in their favor had long since become final. The City and the County therefore moved to strike portions of the second amended complaint referring to them.

Plaintiff's second amended complaint alleged causes of action for fraud, negligent misrepresentation, intentional infliction of emotional distress, negligence, violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 51.7, 52.1), violation of plaintiff's equal protection rights, violation of plaintiff's civil rights under title 42 United States Code Annotated section 1983 (both by direct violation of law and by a policy, practice and custom of causing constitutional violations), conspiracy to violate plaintiff's civil rights, and for injunctive relief.

The individual officers again demurred. Plaintiff's opposition to the demurrers failed to articulate any actual argument, other than to insist that all facts demonstrating the existence of each cause of action had already been pled. The trial court thereafter sustained the officers' demurrers without leave to amend. The court granted judgment for each of the individual officers.

Plaintiff now appeals.

ANALYSIS

I. Standard of Review

“On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. We give the complaint a

reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law. [Citations.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse. [Citation.]” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

II. The Trial Court Properly Sustained the Demurrers Without Leave to Amend

As noted, the demurrers of the public entities were sustained without leave to amend in 2007. Plaintiff failed to appeal from the judgment as to the public entities, and the judgment is final as to them.

As to the individual defendants, the complaint failed to set forth facts sufficient to allege a valid cause of action as to any of them.

Plaintiff’s fraud cause of action alleged that “plaintiff and defendant entered into agreements as detailed above,” but that “[d]efendant breached the said agreement.”

Plaintiff fails to identify which defendant to whom he refers, or the terms of any agreement. The only contractual relations discernible in plaintiff’s allegations of fact concern his tenancy with the Dorans, and his contract with the Dorans to provide them computer assistance. The only damages plaintiff identifies are the cost of legal services to sue defendants and the cost of moving to new lodgings. These “damages” are either

not damages at all, or are attributable to the Dorans, if anyone, and not the named individual defendants.

Likewise, as to the cause of action for negligent misrepresentation, plaintiff fails to provide specific allegations to support the elements of representation, falsity, scienter, and reliance. Moreover, public employees, like defendants, are immune from claims of negligent misrepresentation. (Gov. Code, § 822.2; *Tur v. City of Los Angeles* (1996) 51 Cal.App.4th 897, 902-903.)

The third cause of action, for intentional infliction of emotional distress, is also without merit. Plaintiff has identified no “outrageous conduct” on the part of the public employee individual defendants. He alleges they berated him and abused him, while failing to prevent or investigate the burglary of his premises and the taking and destruction of his property, or the alleged wrongful eviction. In essence, plaintiff complains that the public employee individual defendants did not properly investigate his claims, or that they did not come to the conclusions he desired. However, the employees were immune from any conduct in connection with a criminal or administrative investigation. (Gov. Code, § 821.6.)

For the same reason, plaintiff’s cause of action for general negligence is without merit. Indeed, plaintiff’s complaint betrays that he has sued the wrong party. He should have sued the Dorans, as he alleges that defendants’ “failure to exercise due care in the ownership, operation, and management of the Apartment directly, foreseeabl[y] and legally caused Plaintiff to suffer damages.” The Dorans, not any of the named individual defendants, had ownership, control and management of plaintiff’s rented room.

Plaintiff's cause of action for violation of the Unruh Act is likewise unavailing. While plaintiff's complaint does state that the Dorans made remarks about plaintiff's ancestry or national origin, and while the Unruh Act protects tenants from invidious discrimination (Civ. Code, § 53), the named individual defendants were not plaintiff's landlord. Plaintiff's recitation of facts includes no allegations that any of the individual public employee defendants had done or said anything with respect to plaintiff's nationality.

The failure to allege any facts tying defendants in any manner to actions based upon plaintiff's nationality or other qualifying characteristic also defeats his alleged cause of action for violation of equal protection rights.

Plaintiff's claims of violation of the federal civil rights act (42 U.S.C.A. § 1983) also founder on the qualified immunity afforded to governmental actors. The gist of plaintiff's complaints is that the officers named did not conduct a proper investigation, or that the supervisory officers failed to assign "independent" investigators to look into his complaints about the investigating officers. Here, the decisions about how to investigate plaintiff's initial reports, or whom to assign, are matters that a reasonable officer could consider constitutional. (*Malley v. Briggs* (1986) 475 U.S. 335, 344-346, [106 S.Ct. 1092, 89 L.Ed.2d 271].) "[Q]ualified immunity leaves 'ample room for mistaken judgments,' [citation], and protects 'all but the plainly incompetent or those who knowingly violate the law.' [Citation.]" (*Harman v. Pollock* (10th Cir.2006) 446 F.3d 1069, 1077.) All of the alleged acts of the defendants here—how they conducted their investigations, the alleged errors or "false facts" in their reports, the selection of an

officer to conduct an internal affairs inquiry, etc.—are within the scope of the qualified immunity. (See, e.g., *Nowell v. Acadian Ambulance Service* (W.D. La. 2001) 147 F.Supp.2d 495, 505 [false police reports alone cannot support a claim under 42 U.S.C.A. § 1983].)

Plaintiff's cause of action for a policy, practice and custom of violating civil rights (*Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658 [98 S.Ct. 2018, 56 L.Ed.2d 611]) may only apply to a public entity. Judgment for the public entities here is already final.

Plaintiff's claim of conspiracy to violate his civil rights (42 U.S.C.A. § 1985) falls with his failure to allege any facts to support a violation of equal protection rights.

Finally, plaintiff's cause of action for injunctive relief is untenable for the failure to allege any operative facts relating to the acts of the named individual defendants, or showing either irreparable harm or likelihood of prevailing on the merits so as to warrant injunctive relief. (Cf. *Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1166 [to show entitlement to a preliminary injunction, a plaintiff must prove a likelihood of prevailing on the merits, and that the harm to the plaintiff from not granting the injunction outweighs the harm to the defendant if the injunction is issued].)

The trial court properly determined that plaintiff's second amended complaint failed to state a proper cause of action.

To the extent plaintiff urges that the trial court erred in failing to allow him an additional opportunity to amend, he fails to proffer any manner in which he might possibly amend his pleadings to state a proper cause of action. The court did not abuse

its discretion in denying leave to amend. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

III. The Costs Award Was Proper

Plaintiff contends that the trial court erred in awarding costs to defendants; he argues there was never a proper request for costs. To the contrary, all the defendants' demurrers included a request for costs pursuant to Code of Civil Procedure section 1038. (See *Hall v. Regents of the University of California* (1996) 43 Cal.App.4th 1580, 1587 [purpose of Code of Civil Procedure section 1038 is "to discourage frivolous lawsuits by allowing blameless public entities to recover their defense costs"].) Code of Civil Procedure section 1038 permits the trial court to award defense costs for any claim made under the California Tort Claims Act that is not made in good faith, or that might have been brought in good faith, but is maintained in bad faith. Here, plaintiff's claims were clearly untenable, and plaintiff had no reasonable cause to persist. (Cf. *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1272 [Fourth Dist., Div. Two].)

The court did not err in awarding costs and attorney fees as permitted under Code of Civil Procedure section 1038 and 42 United States Code Annotated section 1988, as to plaintiff's federal civil rights claims.

DISPOSITION

The judgment is affirmed in its entirety. Costs on appeal are awarded to respondents.

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/s/ McKINSTER
J.

We concur:

/s/ RAMIREZ
P. J.

/s/ KING
J.